

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FRANKIE WILLIAM STROUP,

Plaintiff,

v.

Civil Action No. 2:19-cv-15
(Kleeh)

PATRICK RYAN, JOHN
JUSTICE, JENNIFER FLEMING,
SHEVONA LUSK, and DAVID
SUDBECK,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 26],
ADOPTING AMENDED REPORT AND RECOMMENDATION [DKT. NO. 34],
GRANTING PRO SE MOTION FOR VOLUNTARY DISMISSAL [DKT. NO. 25],
AND GRANTING MOTIONS TO DISMISS [DKT. NOS. 20, 29 & 32]

On February 19, 2019, the pro se Plaintiff, Frankie William Stroup ("Stroup"), filed a Complaint seeking relief for several alleged constitutional rights violations related to the adequacy of and access to the law library and legal supplies at William R. Sharpe, Jr. Hospital, and a release hearing [Dkt. No. 1]. Defendants John Justice and Patrick Ryan filed a *Joint Motion to Dismiss the Complaint* [Dkt. No. 20] and, on April 15, 2019, a *Roseboro Notice* was issued to pro se Plaintiff [Dkt. No. 22]. Stroup filed a pro se *Motion for Voluntary Dismissal* on April 26, 2019, requesting that the Court dismiss the matter in its entirety because the relief requested in the Complaint had been addressed by William R. Sharpe, Jr. Hospital [Dkt. No. 25].

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for initial review [Dkt. No. 8]. On April 29, 2019, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the pro se motion for voluntary dismissal [Dkt. No. 25] be granted, and that the Complaint be dismissed without prejudice [Dkt. No. 26]. On June 10, 2019, Defendant Shevona Lusk filed a *Motion to Dismiss* [Dkt. No. 29], and, on September 18, 2019, Defendant David Sudbeck filed a *Motion to Dismiss* [Dkt. No. 32]. The Magistrate Judge issued an Amended Report and Recommendation ("Amended R&R") on September 23, 2019, recommending that the pro se motion for voluntary dismissal [Dkt. No. 25] be granted, and that the motions to dismiss filed by Defendants Justice and Ryan [Dkt. No. 20], Lusk [Dkt. No. 29], and Sudbeck [Dkt. No. 32] also be granted.¹

The R&R and the Amended R&R informed the parties that they had fourteen days (and an additional three days for mailing) from the entry of the recommendations to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection" [Dkt. No. 26 at 1-2; Dkt. No. 34 at 1-2]. The R&R and Amended R&R further warned the parties that the "[f]ailure to file

¹ The Summons issued for Defendant Jennifer Fleming was returned to the Court unexecuted [Dkt. No. 17], and Fleming did not make an appearance in this matter.

written objections ... shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals" [Id.]. Service of the R&R was accepted on May 2, 2019 [Dkt. No. 27], and service of the Amended R&R was accepted on September 26, 2019 [Dkt. No. 35]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the [parties do] not object." Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R and the Amended R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [Dkt. No. 26] and **ADOPTS** the Amended R&R [Dkt. No. 34]. The Court **GRANTS** the Plaintiff's pro se Motion for Voluntary Dismissal [Dkt. No. 25], as well as the *Joint Motion to Dismiss* of Defendants Justice and Ryan [Dkt. No. 20], *Motion to Dismiss* of Defendant Lusk [Dkt.

No. 29], and *Motion to Dismiss* of Defendant Sudbeck [Dkt. No. 32. The Complaint is **DISMISSED**, and this action is **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and to the pro se Plaintiff, via certified mail, return receipt requested, at the last known address as shown on the docket.

DATED: December 4, 2019

A handwritten signature in black ink, appearing to read "Tom S. Klee".

THOMAS S. KLEE
UNITED STATES DISTRICT JUDGE